IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 869 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIM MEHBUBKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KG SHETH, Learned APP for Respondent Nos.1,2 &3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/10/2000

C.A.V. JUDGEMENT

1. The present petition has been filed by the petitioner under Articles 14, 19, 21, 226 and 227 of the Constitution of India for appropriate writ, order or

direction for quashing and setting aside the order of externment passed by the Deputy Commissioner of Police, Ahmedabad on 1.7.2000 in Externment Case No. 188 of 2000 passed under Section 56 of the Bombay Police Act,1951 (for short "the said Act") which was thereafter confirmed on 21.9.2000 by Deputy Secretary, Home Department, Government of Gujarat in Appeal under Section 60 of the said Act. The petitioner was served with notice under Section 59 of the said Act which is placed at Annexure-A at page 12 on 24.9.1999 to show cause as to why he may not be externed out from the limits of the area indicated in the notice. The said notice was issued by the Assistant Commissioner of Police. After hearing the petitioner, the Deputy Commissioner of Police passed the order on 1.7.2000 directing the externment of the petitioner for a period of two years from the area indicated in the order dated 1.7.2000.

2. Feeling aggrieved by the said order of the Deputy Commissioner of Police, Ahmedabad, the petitioner preferred an appeal under Section 60 of the said Act which was also dismissed by the Deputy Secretary, Home Department, Sachivalaya Gandhingar on 21.9.2000.

3. Feeling aggrieved by the said two orders of the said two authorities, the petitioner has preferred this petition before this Court on various grounds.

4. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appeared for State. I have heard learned the advocates for the parties and have perused the papers.

5. The learned advocate for the petitioner has argued at length that show cause notice was issued under Section 59 of the said Act by the Assistant Commissioner of Police. This can be gathered from notice at Annexure-A at page-12 to the petition. Then he has also argued that ultimate order of externment was passed by the Deputy Commissioner of Police on 1.7.2000. The learned advocate for the petitioner submits that when the proceedings were initiated by the Assistant Commissioner of Police after application of mind to the information received by him and when the reply was submitted to the said authority, there was no need or reason for the Deputy Commissioner of Police to exercise the powers of externment against the petitioner. The respondents have not explained as to why the powers were exercised by the Deputy Commissioner of Police though the proceedings were initiated by the Assistant Commissioner of Police. There is nothing on record to show that the case was

transferred from one authority to another authority. It is not explained as to who transferred the matter and why the matter was transferred.

5. On this aspect of the case, the learned advocate for the petitioner has relied upon a decision of this Court (Coram : D.C.Srivastava, J.) in the case of Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat and Ors. reported in 1999 (2) GLH 786. The said observations and finding para.6 of the judgement may be reproduced for ready reference as follows :

Para.6

"Coming to the first stage, if the show cause notice is examined and the externment order is perused, it prima facie appears that the show cause notice was issued by the Assistant Commissioner of Police (Eastern Division) Rajkot City : whereas the impugned order was passed by the Deputy Commissioner of Police, Rajkot City, Rajkot. It thus appears from the record that the impugned order was not passed by the authority who issued the show cause notice after entertaining subjective satisfaction that it was necessary to extern the petitioner from the three districts. No affidavits has been filed explaining that the externing authority was actually the successor of the authority who issued the show cause notice. There is no material on record to infer that the authority who is issued the show cause notice was transferred and thereafter no other officer was posted to succeed him and his business was allocated to the externing authority in addition to his work. Thus from the material on record as it exists today, it can be said that the subjective satisfaction before issuing the show cause notice was entertained by one authority; whereas the externment order was passed by another authority."

6. There is no reason to defer from the said decision and the principle enunciated in the said decision which does not appear to have been challenged before any Higher Authority. Therefore, it is clear that if once such decision is followed then present petition will have to be allowed and the externment has to be quashed and set aside on the ground that the proceedings were initiated by the Assistant Commissioner of Police and final order was passed by the Deputy Commissioner of

Police without assigning any reason and explanation. Following the said principle in the said matter, I am of the view that the present externment order has to be quashed and set aside.

7. In the aforesaid view of the matter, this petition is allowed. The order of externment dated 1.7.2000 passed under Section 56 of the said Act by the Deputy Commissioner of Police in Externment Case No. 188 of 2000 and confirmed in Appeal by the Deputy Secretary, Home Department, Government of Gujarat under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly. Direct service is permitted.

(D.P.Buch,J)

(vipul)